

To: Mugdan, Walter[Mugdan.Walter@epa.gov]; Flanagan, Sarah[Flanagan.Sarah@epa.gov]; Mellott, Deborah[Mellott.Deborah@epa.gov]
From: Fajardo, Juan
Sent: Tue 5/23/2017 2:15:03 PM
Subject: RE: Passaic

I spoke with David Mandelbaum who's client is Benjamin Moore. We had a long conversation (you don't need all the details). His idea is that EPA enter into settlements with all the PRPs but Oxy for the RD. He knows that Oxy is performing and funding the RD. His idea is that the PRPs would pay a small amount (each would pay the same amount) and then have peace of mind for a few years until the remedy needs to be implemented. I told him that seems grossly unfair to Oxy, and he said that whatever underpayment the PRPs make to the RD would be captured during the RA.

As we talked, David did raise an interesting issue. He said that this case will end in litigation because courts take into account "soft allocation factors" (fairness, knowledge of release, fault...), that EPA and DOJ don't care much about. The U.S. likes to base its decisions on waste-in lists and amount of material released and not in degree of culpability. He says that this difference results in parties choosing between go to EPA or seeking litigation. For instance, Oxy would prefer to have EPA involvement in the settlement process whereas most of the other majors want a court to decide each parties "fair" share.

I told David that I don't think there will be much interest here in pursuing a settlement with the PRPs re: the RD. I did not say that I would call him back with a response to his proposal (he got that). That said, we left the door open for further discussions down the line, and I did tell him that we expect to notify the proposed major parties before a final decision is made and provide those proposed parties with an opportunity to speak with us regarding that designation.

From: Mugdan, Walter
Sent: Tuesday, May 23, 2017 8:30 AM
To: Fajardo, Juan <Fajardo.Juan@epa.gov>
Subject: RE: Passaic

Yes, please. Thanks.

From: Fajardo, Juan

Sent: Tuesday, May 23, 2017 8:23 AM

To: Flanagan, Sarah <Flanagan.Sarah@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>

Subject: RE: Passaic

Walter,

Do you want me to call David?

Juan

From: Flanagan, Sarah

Sent: Tuesday, May 23, 2017 8:11 AM

To: Mugdan, Walter <Mugdan.Walter@epa.gov>

Cc: Fajardo, Juan <Fajardo.Juan@epa.gov>

Subject: RE: Passaic

Thanks Walter. We've been receiving many such calls.

I'm copying Juan, who is typically the recipient of the calls and is a good listener.

From: Mugdan, Walter

Sent: Tuesday, May 23, 2017 8:06 AM

To: Flanagan, Sarah <Flanagan.Sarah@epa.gov>

Subject: Passaic

Hi Sarah,

Last Friday, when I was away from the office, Maureen Hickey took a phone message for me from a David Mandelbaum, attorney with Greenberg & Traurig, 215-988-7813 (or cell: 610-247-0183). Maureen wrote:

“He knows you from ABA +/-or FMC Middleport [a RCRA site]. Re: Passaic, client is Benjamin Moore. He has an idea that you may find useful.”

Perhaps you can give him a call back.

Thanks,

Walter